

# OUTLINES OF CURRENT JUDICIARY OF BANGLADESH: A STUDY

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## **Abstract:**

Judiciary is an important organ of a State whereas Bangladesh judiciary comprises all courts and tribunals created under the constitution and statutes of the country which can be drawn broadly by the Supreme Court (higher judiciary) and subordinate courts (lower judiciary). The highest court in Bangladesh is known as the Supreme Court of Bangladesh having two divisions- a) the High Court Division and b) the Appellate Division (Bangladesh Constitution, Art. 94) (hereinafter as the Constitution). Subordinate courts may be civil, criminal, special or tribunal. Due to existing problems viz., backlogs of cases, fake cases, inadequate of judicial officers and accommodation, corruption, backdated laws etc., the current judiciary cannot ensure justice in due time and consequently people are losing confidence upon the judiciary.

**Keywords: Judiciary, Bangladesh, Courts, Outlines, Backlogs etc.**

## **1. Introduction:**

Judiciary is an important organ of a State, the responsibility of which is to ensure, protect, enforce people rights either constitutional or statutory and overall the responsibility is to establish the rule of law and examine the activities of the executive, legislature and even the activities of itself. It is rightly said that “the judiciary stands between the people of the country and the State as a bulwark against Executive pressure, excesses and misuse of power by the Executive” (61 DLR 523, Para-208).

Generally, the judiciary of a country comprises all courts and tribunals which interpret law, settle legal disputes, enforce rights of citizens and impose penalty to the offenders. What are overall outlines of current judiciary of Bangladesh?; What is the evaluation of current judiciary?; Whether this judiciary can ensure justice due time?; What are existing basic problems of current judiciary?; all these are matters of research. Under considering all these matters, this paper has been conducted.

## **2. Historical Background:**

After independence of Bangladesh, the High Court of East Pakistan was turned into the name of High Court of Bangladesh by the High Court of Bangladesh Order, 1972 which was then highest court of newly birth country-Bangladesh adapted on 17<sup>th</sup> January 1972.<sup>1</sup>

The then High Court consisted of Chief Justice and other judges who were appointed by the president. The term and conditions also were determined by the president. The High Court of Bangladesh as a Court of Record<sup>2</sup> had original, appellate, revisional, review, special, procedure and all other powers as exercised by the High Court of East Pakistan but it could not exercise any issue of writ.<sup>3</sup> This power was banned by the High Court of Bangladesh (Amendment) Order 1972 (President Order No. 91 of 1972).<sup>4</sup> After passing such amendment Order, a new Division called Appellate Division of the High Court of Bangladesh was established consisting of one chief justice and other judges appointed by the president with the consultation of chief justice.<sup>5</sup> The purpose of establishing such appellate Division was to deal with all appeals and petitions pending before Supreme Court of Pakistan, arisen in East Pakistan. The President Order No. 91 of 1972 also provided to follow the rules made by erstwhile Supreme Court of Pakistan.<sup>6</sup> All functions of the subordinate courts and magistracy courts were unchanged and continued under the laws of

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<sup>1</sup> Hoque, Kazi Ebadul, *Administration of Justice in Bangladesh*, 1<sup>st</sup> Edition, Asiatic Society of Bangladesh, Dhaka, 2003, p. 26.

<sup>2</sup> See, Article 108 of *the Constitution of the Peoples' Republic of Bangladesh, 1972*

<sup>3</sup> Hoque, Kazi Ebadul, *Administration of Justice in Bangladesh*, 1<sup>st</sup> Edition, Asiatic Society of Bangladesh, Dhaka, 2003, p. 27.

<sup>4</sup> *Ibid*

<sup>5</sup> *The High Court of Bangladesh Order 1972*, Sec 3.

<sup>6</sup> Hoque, Kazi Ebadul, *Administration of Justice in Bangladesh*, 1<sup>st</sup> Edition, Asiatic Society of Bangladesh, Dhaka, 2003, p. 27.

Continuance Enforcement Order 1971.<sup>7</sup> All judges and officers of the subordinate courts acted under the supervision of the High Court of Bangladesh. This is the beginning of the judiciary of new country-Bangladesh.

### **3. Current Judicial System in Bangladesh:**

The current Judiciary of Bangladesh can be drawn broadly by the Supreme Court (higher judiciary) and subordinate courts (lower judiciary). The highest court in Bangladesh is known as the Supreme Court of Bangladesh having two divisions- a) the High Court Division and b) the Appellate Division (Bangladesh Constitution, Art. 94) (hereinafter as the Constitution). Subordinate courts may be civil, criminal, special or tribunal.

#### **i) Supreme Court of Bangladesh**

Now, Supreme Court is the highest court of Bangladesh. The Supreme Court comprises with Appellate Division and High Court Division. It consists of the Chief Justice and other judges.<sup>8</sup> According to Article 94(4) of the Constitution, it ensures the judges to exercise their judicial function independently. It means no body of the government or from any corner of the society will interfere the functions of judges. It is the last resort of the aggrieved person.

The Chief Justice and other judges are appointed by the president.<sup>9</sup> To be a judge, he must be a citizen of Bangladesh and he must have 10 years' experience as advocate of Supreme Court or 10 years' experience as judicial officer in Bangladesh or qualified by law.<sup>10</sup> They shall hold the office till attaining sixty seven years old. In case of vacancy of the office of Chief Justice, the vacancy shall be filled up by the next most senior judge of Appellate Division to perform the functions of Supreme Court.<sup>11</sup> President may also appoint Additional Supreme Court Judges. Supreme Court

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<sup>7</sup> *Ibdi*, p. 26

<sup>8</sup> *The Constitution of the Peoples' Republic of Bangladesh 1972*, Art 94 (2).

<sup>9</sup> *Ibid*, Art 95 (1).

<sup>10</sup> *Ibid*, Art 95 (2).

<sup>11</sup> *Ibid*, Art 97.

shall be situated at Dhaka as capital of Bangladesh. Supreme Court also is empowered to make rule and review the judgment of it.<sup>12</sup> Its decision is binding for all courts.<sup>13</sup>

The Higher Court in Bangladesh is independent from any interference of other organs of the government which is clearly recognized by the Constitution of Bangladesh under Article 22, 94 (4), 109, 112 and 116A; even it is also recognized in some leading cases like *Anwar Hossain vs Bangladesh case*, *Masdar Hossain case*, 13<sup>th</sup> amendment and 16<sup>th</sup> amendment case. Supreme Court is divided into two divisions namely: High Court Division (HCD and) Appellate Division (AD).

**a. The High Court Division:**

High Court Division has both original and appellate jurisdiction as well as the power to issue writ, order and direction in the nature of habeas corpus, mandamus, prohibition, quo warranto or certiorari.<sup>14</sup> It has power to control and superintendence over all courts subordinate to it.<sup>15</sup> The jurisdiction of the high court division may be divided into two categories, namely: i) ordinary or general and ii) constitutional jurisdiction.

**b. The Appellate Division:**

Appellate Division is empowered to hear appeals from judgments, decrees, orders or sentences of the High Court Division.<sup>16</sup> Appeals as matter of right can be filed before Appellate Division on the ground of interpretation of statute, death sentence, life imprisonment, punishment for contempt of court.<sup>17</sup> It has also power to review the judgments or order by it.<sup>18</sup> Beside this, it has advisory jurisdiction.<sup>19</sup> The Appellate Division of Supreme Court of Bangladesh has no original jurisdiction but it has appellate jurisdiction.

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<sup>12</sup> *Ibid*, Art 105 & 107.

<sup>13</sup> *Ibid*, Art 111.

<sup>14</sup> *Ibid*, Art 1972, Art 101 & 102 (2).

<sup>15</sup> *Ibid*, Art 109.

<sup>16</sup> *Ibid*, Art 103.

<sup>17</sup> *Ibid*, Art 103 (2).

<sup>18</sup> *Ibid*, Art 105.

<sup>19</sup> *Ibid*, Art 106 [cited in Akkas, Sarkar Ali, *Independence and Accountability of Judiciary: A Critical Review*, 1<sup>st</sup> Edition, Centre for Rights and Governance, Dhaka, 2004, p. 89].

## **ii) Subordinate Courts**

Subordinate courts may be known as lower judiciary of country referring to the courts as civil, criminal, special or tribunal etc. According to Article 114, there shall be established sub-ordinate court of Supreme Court in Bangladesh which may be formed by law.<sup>20</sup> In a broad sense, subordinate courts can be divided into two categories namely: Civil Court and Criminal Court. By the separation of judiciary from the executive in 2007, actually the magistrate courts are separated from the executive and from that time these magistrate courts are termed as judicial magistrate courts and for that some changes have been brought in the Code of Criminal Procedure, 1908 (hereinafter as CrPC).

### **a. Civil Courts:**

Civil courts are those courts which have jurisdiction to try all suits of a civil nature, i. e. a suit in which the right to property, post or an office is contested except its cognizance is expressly or impliedly barred by any law (CPC, Section 9). Therefore, when citizens' individual legal rights or private rights e.g. right to property, post or office are affected, citizens can seek the remedies from the civil courts. There are five classes of civil courts recognized by the Civil Courts (Amendment) Act, 2001 (Act No. XLIX of 2001) in Bangladesh, namely:

- ☞ The Court of the District Judge
- ☞ The court of Additional District Judge
- ☞ The Court of Joint District Judge
- ☞ The Court of Senior Assistant Judge
- ☞ The Court of Assistant Judge

Among them, the District Court is subordinate to the High Court Division, and every Civil Court of a grade inferior to that of a District Court (CPC, Section 3). Besides, the Constitution declares that the High Court Division has superintendence and control over all courts and subordinate to it (Art.109).

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<sup>20</sup> *The Constitution of the Peoples' Republic of Bangladesh 1972, Art 114.*

### **The Court of District Judge:**

District judge is the head of civil judiciary in each district.<sup>21</sup> It has administrative control over all civil courts situated in local limits.<sup>22</sup> A District Judge generally does not deal with original suits except some cases, viz., **insolvency, probate and administration**, matters under **Trade Marks Act, 2009**<sup>23</sup> where the pecuniary jurisdiction of such court is unlimited.<sup>24</sup> Such court is also empowered to transfer its function and appeal to the Additional District Judge or any other civil court under its control.<sup>25</sup> The court is authorized to transfer, withdraw any suit, appeal and other proceedings in any civil courts below HCD.<sup>26</sup> It is remarkable that the Court can exercise the revisional power, under section 115 of the Code of Civil Procedure 1983, on the ground of error of law or failure of justice caused by the inferior court of it. In case of appeal and revision, the pecuniary jurisdiction is till five lacs.<sup>27</sup> In a case *Bangladesh v A.H.M Khurshed Ali*, it is held that where the valuation of the subject matter of proceeding exceeds five lacs then the revisional application shall lie to the HCD under section 115(1) of CPC.<sup>28</sup> Besides these, District Judge is also acted as a Session Judge to adjudicate criminal cases.<sup>29</sup>

### **Courts of Additional District Judge:**

The court of additional district is comprised with the additional district judge who is appointed through promotion amongst the joint distinct judges. The pecuniary jurisdiction of this court is also unlimited. This court has also not original jurisdiction but this court can usually try those cases which are transferred to it from the court of the District Judge.<sup>30</sup> This court also acts as court of additional session judge. Appeal against the decision of this court lies to the High Court Division.<sup>31</sup>

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<sup>21</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 110.

<sup>22</sup> *The Civil Court Act 1887, Sec 9.*

<sup>23</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 110.

<sup>24</sup> *Ibid.*

<sup>25</sup> *The Civil Court Act 1887, Sec 08, 11, 22, 23.*

<sup>26</sup> *The Civil Court Act 1887, Sec 24.*

<sup>27</sup> Hoque, Kazi Ebadul, *Administration of Justice in Bangladesh*, 1<sup>st</sup> Edition, Asiatic Society of Bangladesh, Dhaka, 2003, p. 36.

<sup>28</sup> 14 MLR (AD) 57

<sup>29</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 111.

<sup>30</sup> *Ibid*

<sup>31</sup> *The Civil Court Act 1887, Sec 20.*

### **The Court of the Joint District Judge:**

They are appointed through the promotion from amongst the senior assistant judges. The court has original and appellate jurisdictions. Its pecuniary jurisdiction states with taka 4 lack to unlimited.<sup>32</sup> Sometimes it acts as a small cases court and Joint Session Judge.<sup>33</sup> The court hears the appeals imposed upon it by the District Judge against the order or decree of a Senior Assistant Judge or Assistant Judge.<sup>34</sup> Appeals against Senior Assistant Judge or Assistant Judge may be laid to the Joint District Judge in lieu of District Judge on the direction of High Court Division but with the previous sanction of the Government.<sup>35</sup>

### **The Courts of Senior Assistant Judge:**

This court is consisted with a senior assistant judge. They are appointed through promotion of amongst assistant judge. The pecuniary jurisdiction of this court does not exceed 4 lac taka but not less than 2 lac. Appeal against this court lies to the District Judge Court. It acts as Small Causes Court.<sup>36</sup> Besides this, it also acts as Family Court and Election Tribunal consecutively under the Family Courts Ordinance, 1985 and Local Government (Upzilla Parishad) Ordinance, 1983.<sup>37</sup>

### **The Court of Assistant Judge:**

This court shall be consisted of an assistant judge. The pecuniary jurisdiction does not exceed 2 lack taka. It has small revisional power in all petty civil cases coming from village courts under the Village Courts Acts 2005. It acts as Small Causes Court. Appeal from this court lies before the Court of District Judge.

### **Special Tribunal:**

Special tribunal established in our legal system in two ways.

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<sup>32</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 112.

<sup>33</sup> *The Civil Court Act 1887*, Sec 25.

<sup>34</sup> *S The Civil Court Act 1887*, Sec 22.

<sup>35</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 113.

<sup>36</sup> *The Civil Court Act 1887*, Sec 25.

<sup>37</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 113.

1. Established by constitution
2. Established by statute

### **Special Tribunal under Constitution**

The formation and function of the administrative tribunal is laid down under the constitution. Article 117 of the Constitution of Bangladesh recognizes the Administrative tribunals. It stipulates that parliament may by law establish one or more administrative tribunal to exercise jurisdiction of matters relating to the terms and conditions, punishment of public servants.<sup>38</sup> There are two types of tribunal such as; Administrative Tribunal and Administrative Appellate Tribunal.<sup>39</sup>

#### **Administrative tribunal:**

Administrative tribunal is not under the control of executive body or administrative department of the government.<sup>40</sup> It is a quasi-judicial body but not absolutely administrative in nature.<sup>41</sup> In *Mujibur Rahman v. Bangladesh M.H. Rahman* J was also reflected the same view.<sup>42</sup> In a case namely *Banglades v. A.K.M Zahingir* it was held that any tribunal which is not invested with some part of the judicial power of the Republic is outside the ambit of Art. 102 (5). To run Administrative tribunal parliament passed an Act namely “Administrative Tribunal Act 1980” and Administrative Tribunal Rules were also made in 1982.<sup>43</sup> Administrative tribunal deals such disputes which are relating to employment between the government and its employers. Each administrative Tribunal consists of one member who is appointed by the government from amongst person who is or has been district judge.<sup>44</sup> It has exclusive jurisdiction to have and determine application made by any persons in the service of the people republic of a statutory public authority

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<sup>38</sup> *The Constitution of the Peoples' Republic of Bangladesh 1972*, Art 117 (1).

<sup>39</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 141.

<sup>40</sup> Takwani, C.K, *Lectures On Administrative Law*, 5<sup>th</sup> Edition, Eastern Book Company, Lucknow, 2012, p. 243.

<sup>41</sup> *Ibid*.

<sup>42</sup> Islam, Mahmudul, *Constitutional law of Bangladesh*, 3<sup>rd</sup> Edition, Mullick Brothers, 2012, 578.

<sup>43</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 141.

<sup>44</sup> *The Administrative Tribunals Act 1980, Sec 3*.



in respect of the terms and conditions of his service against the decision of departmental authority.<sup>45</sup>

### **Administrative Appellate Tribunal**

According to section 5 of the Administrative Tribunal Act, 1980, the Tribunal consists one chairman and two members. The Chairman is appointed from among the persons who are or have been judges of the Supreme Court and amongst two members one is a Joint Secretary and other is a District Judge. Section 6 provides the aggrieved person have to file appeal, against the decision of Administrative Tribunal within three month from the date of order or decision.

### **Special Tribunal under Statute**

#### **Labour Court**

The Government may by notification in the official gazette establish one or more labour court as it necessary.<sup>46</sup> A labour court shall be consisted of a chairman and two members but in respect of any matter under chapter ten and twelve it shall be consisted by of a chairman alone.<sup>47</sup> Among two members, one of the members is to represent the workmen and the other to represent the employers.<sup>48</sup>

The chairman may be appointed from the district judges or additional district judge.<sup>49</sup> The members shall be appointed after consultation with the employers and workmen. According to the Labour Code, 2006 a labour court shall have exclusive jurisdiction on the following matters namely<sup>50</sup>:

- To adjudicate and determine industries dispute on to try any offence under this Code.

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<sup>45</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 142.

<sup>46</sup> *The Bangladesh Labour Code 2006, Sec 214.*

<sup>47</sup> *Ibid, Sec 214 (3).*

<sup>48</sup> *Ibid, Sec 214 (6).*

<sup>49</sup> *Ibid, Sec 214 (4).*

<sup>50</sup> *Ibid, Sec 214 (10).*

- To examine and adjudicate any implementation on violations of a settlement which is referred by the government.
- To exercise any power referred by this code.

Any party aggrieved against the order or decision of the tribunal may lie an appeal to the Labour Appellate Tribunal.<sup>51</sup>

### **Labour Appellate Tribunal**

According to the sec 218 of Labour Code, 2006, labour appellate tribunal shall be consisted of chairman and such number of members and such chairman shall be appointed from among person who is one has been a judge or an additional judge of the Supreme Court or is or has been a District Judge for at least three year. Labour tribunal shall follow as namely as possible the provision of Civil Code Procedure to hear appeal.<sup>52</sup> This tribunal has power to modification awarded decision, judgment or section given by the labour court. If any person aggrieved on the decision of the labour appellate tribunal than the aggrieved person may appeal to the High Court Division.<sup>53</sup> The judgment of the tribunal shall be delivered within sixty days from the date of filling appeal.<sup>54</sup> It may pronounce a punishment for any term, or to pay fine exceeding two thousand taka.<sup>55</sup> Appeal against the court may file/prefer to the High Court Division.<sup>56</sup>

### **The Artha Rin-Adalat**

The Artha Rin Adalat was established under section 104 of the Artha-Rin-Adalat Ain 2003. Every financial institution as listed in section 2 will file suits for recovery of money against a loan under this Act. This Adalat follows its own proceeding as well as the proceeding of CPC and application

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<sup>51</sup> Hoque, Kazi Ebadul, *Administration of Justice in Bangladesh*, 1<sup>st</sup> Edition, Asiatic Society of Bangladesh, Dhaka, 2003, p.47.

<sup>52</sup> *The Bangladesh Labour Code 2006, Sec 218 (7)*.

<sup>53</sup> *Ibid, Sec 118 (13)*.

<sup>54</sup> *Ibid, Sec 218 (11)*.

<sup>55</sup> *Ibid, Sec 218 (13)*.

<sup>56</sup> Halim, Md. Abdul, *Textbook on Bangladesh Labour Code*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2017, p. 287.

will be filed to the court through affidavits. A joint district judge will be appointed as judge of this court.

### **Land Survey Tribunal:**

Land survey tribunal has been established under chapter (xvii), section 145 (A) of the State Acquisition and Tenancy Act (1950). This chapter has been added in 2004 by an amendment of the Act. As many Land Survey Tribunal as necessary to deal the suits related to record of rights made under section 144 of the Act, Government may determine and alter the territorial limits of jurisdiction regarding any Land Survey Tribunal.<sup>57</sup> In appointing judges of the tribunal, the government with the consultation of the Supreme Court appoints judges of the Land Survey Tribunal amongst the Joint District Judges.<sup>58</sup>

### **Land Survey Appellate Tribunal**

Government may by the notification of the official Gazette set up Land Survey Appellate Tribunal to hear appeals which is filled against the order or decision of Land Survey Tribunal.<sup>59</sup> Government may also fix and alter the territorial limits of jurisdiction regarding any Land Survey Appellate Tribunal.<sup>60</sup> Government shall appoint the judge of the land Survey Appellate Tribunal from amongst persons who are or have been judges of the High Court Division of the Supreme Court.<sup>61</sup> According to 145C of the State Acquisition and Tenancy Act, 1950 states that appeal against the order or decision of the tribunal lies before the Appellate Division of the Supreme Court if leave to appeal is granted.<sup>62</sup>

### **VAT Appellate Tribunal:**

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<sup>57</sup> *The State Acquisition and Tenancy Act 1950, Sec 145A (2).*

<sup>58</sup> Hoque, Kazi Ebadul, *Administration of Justice in Bangladesh*, 1<sup>st</sup> Edition, Asiatic Society of Bangladesh, Dhaka, 2003, p.53.

<sup>59</sup> *The State Acquisition and Tenancy Act 1950, Sec 145B (1).*

<sup>60</sup> *Ibid, Sec 145B (2).*

<sup>61</sup> *Ibid, Sec 145B (3).*

<sup>62</sup> Hasan, Mohammad Iqbal, *A Text Book On Land Law*, 1<sup>st</sup> Edition, Sui Juris, Chittagong, 2015, p. 274.

Under Customs Act 1969, an appellate Tribunal is established to be called the Customs, Excise and VAT Appellate Tribunal.<sup>63</sup> It consists of any technical and judicial members as much as it is necessary.<sup>64</sup> Technical member shall be a person who was or is a member of Board or Commissioner of Customs and the person who has held any equivalent post for at least two years.<sup>65</sup> A judicial member shall be a person who has at least ten (10) years' experience as a judicial officer acted as District and Session Judge in Bangladesh, or who has acted as a Bangladesh Civil Service (Judicial) for at least three years or who has practiced as an advocate for at least ten (10) years.<sup>66</sup>

It is a quasi-judicial body.<sup>67</sup> The Commissioner of Custom or other party may make an application of appeal to High Court Division within ninety (90) days from the date of serving notice.<sup>68</sup> In appellate Division, leave to appeal may be lodged regarding custom.<sup>69</sup>

#### **Taxes Appellate Tribunal:**

It is the highest judicial authority in case of tax authority, established by the Govt. under sec. 11 of Income Tax Ordinance (ITO), 1984. Taxes Appellate Tribunal consists of a president and such other members as the Government may, from time to time, appoint. A member shall be a person who, is or has been a District Judge, or he is an Advocate and practised professionally for not less than ten years in any income tax office (ITO, 1984, s.11). Appeal from Appellate Joint Commissioner or Commissioner lies to the Appellate Tribunal.<sup>70</sup> Appeal from Appellate Tribunal of Tax lies to the Appellate Division but with the certificate of High Court Division.<sup>71</sup>

#### **Family Court:**

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<sup>63</sup> *The Custom Act 1969, Sec 196.*

<sup>64</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 144.

<sup>65</sup> *Ibid*, pp. 144-145.

<sup>66</sup> *Ibid*, p. 145.

<sup>67</sup> *The Custom Act 1969, Sec 196C.*

<sup>68</sup> *The Custom Act 1969, Sec 196B.*

<sup>69</sup> Halim, Md. Abdul, *The Legal System of Bangladesh*, 8<sup>th</sup> Edition, CCB Foundation, Dhaka, 2014, p. 144.

<sup>70</sup> *Ibid*, Sec 158.

<sup>71</sup> *Ibid*, Sec 160.

The Family Court is a special court. It has a special identity. They have been established under the Family Court Ordinance 1985.<sup>72</sup> Family Court is a court of Assistant Judge.<sup>73</sup> The court have jurisdiction over the following matters.<sup>74</sup>

1. Desolation of marriage
2. Dower
3. Restitution of conjugal rights
4. Maintenance
5. Guardianship and custody of children.

The Court follows pre-trial proceeding and post-trial proceeding. After filing written statement, the court shall fix a date within 30 days from filing written statement for a pre-trial hearing.<sup>75</sup> On the fixed date, the court will try to reconciliation and reach a compromise between parties on the disputed issues.<sup>76</sup> If the Parties don't agree to make a compromise between than the court shall pronounced its judgment<sup>77</sup> Where a dispute is settled by the conciliation or compromise, the court shall pronounce the decree or decision which is made by parties through conciliation or arbitration.<sup>78</sup>

#### **Small Causes Court:**

According to sec 25 of the Civil Courts Act 1887, small cause court was established for the settlement of small and petty claims matters between parties. There is no separate court for small cause but some regular judges, namely - the joint district judge, senior assistant judge and assistant judge have jurisdiction to try cases of small cases. According to the section 15 of the Civil Courts Act 1887 all suits of civil nature of which values do not exceed 25 thousand taka shall be

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<sup>72</sup> *The Family Courts Ordinance 1985, Sec 4.*

<sup>73</sup> *Section 4, the Family Court Ordinance, 1985*

<sup>74</sup> *The Family Courts Ordinance 1985, Sec 5.*

<sup>75</sup> *The Family Courts Ordinance 1985, Sec 10.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *The Family Courts Ordinance 1985, Sec 13(2).*

<sup>78</sup> *Ibid, Sec 14.*

cognizable by the court of small causes and it is the highest pecuniary jurisdiction of this court. According to the sec 25 of the Civil Courts Act 1887,

1. Small causes suit valued up to taka six thousand is to be filed in the court of assistant judge.
2. Suit valuation up to taka 10 thousand to be filed in the senior assistant judge court of the local area.
3. Suit valuation up to taka 20 thousand is to be filed in the joint district judge court of the local area vested with small causes lower.

It shall follow the summary procedure and there is no need to follow the procedure of framing of issues & record of evidence.<sup>79</sup> Appeal from this court shall lie to the district judges' court.<sup>80</sup> High Court Division is empowered to revise the decision of small causes court.<sup>81</sup> District Judge Court shall control the small causes Court under the supervision of High Court Division.<sup>82</sup> District Judge is empowered to withdraw a case from the small causes Court.<sup>83</sup> Small Causes Court have no jurisdiction in following matters;

- ✓ Execution of decrees.
- ✓ Execution of immovable property
- ✓ Attachment of immovable property
- ✓ Injunctions
- ✓ Appointment of receiver of immovable property

### **Criminal Courts:**

Criminal courts are those courts which try offences enshrined in the criminal laws existing in Bangladesh with a view to protecting and enforcing citizens' rights and upholding the rule of law in the society. Under the Code of Criminal Procedure, 1898 (hereinafter as CrPC) there shall be

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<sup>79</sup> *The Code of Civil Procedure 1908, Order 50.*

<sup>80</sup> *The Code of Civil Procedure 1908, Sec 104 & The Small Causes Court Act 1887, Sec 24.*

<sup>81</sup> *The Small Causes Court Act 1887, Sec 25.*

<sup>82</sup> *Ibid, Sec 28.*

<sup>83</sup> *Ibid, Sec 28A.*

two classes of Criminal Courts in Bangladesh besides the Supreme Court and the Courts constituted under any law, namely:-

(a) Courts of Sessions; and

(b) Courts of Magistrates;

Magistrate court is of two types, namely:-

(a) Judicial Magistrate; and

(b) Executive Magistrate

### **Courts of Session Judge:**

In every district there is a Court of Session. A Court of Session is headed by the Session Judge, Additional Session Judge, Joint Session Judge and they are appointed from District Judge, Additional District Judge & Joint District Judge. District judges shall have power to work as a Court of Session it has jurisdiction to give death sentence subject to confirmation by the High Court Division. When the Court of Session is situated in a metropolitan area is called the court of the metropolitan session.

The Court can try fresh cases regarding criminal offence under Penal Code, 1860 or any other laws. In these cases, Colum 8 of Schedule II of the Code of Criminal Procedure, 1898 specify the offences which can be tried by Session Judge. The offences are waging, attempt to wage, war against Bangladesh, sedition, murder, culpable homicide, giving false evidence to cause a capital punishment, voluntarily causing hurt etc.<sup>84</sup>

### **Court of Additional Session Judge:**

The court of additional session judge shall exercise same powers like session judge court. When additional session judge situate in Metro Politian area is called additional metropolitan session

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<sup>84</sup> *The Code of Criminal Procedure 1898, Sec 28.*

judge. The court has no original jurisdiction, appellate jurisdiction and revisional jurisdiction but if the government direct or the Court of Session Judge transfers cases to deal as appeal, review or revision than it can try the cases.<sup>85</sup> It can pass death penalty subject to confirmation by the High Court Division.

### **Court of Joint Session Judge:**

Joint session judge may exercise any power authorize by law except a sentence of death or a term exceeding ten years imprisonment. When joint session judge located in metropolitan area is called joint metropolitan session court. It has also not original, appellate and revisional jurisdiction but if the government or Session Judge directs the Joint Session Judge to try a case as appeal, review or revision, the court can exercise the functions.<sup>86</sup>

### **Judicial Magistrate Court:**

According to section 6 (3) there shall be four types of judicial magistrate in district & metropolitan area namely:

- (a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas;
- (b) Magistrate of the first class, who shall in Metropolitan area, be known as Metropolitan Magistrate;
- (c) Magistrate of the second class; and
- (d) Magistrate of the third class.

In practice judicial magistrate courts are known as Chief judicial magistrate, additional chief judicial magistrate, senior judicial magistrate and judicial magistrate.

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<sup>85</sup> *The Code of Criminal Procedure 1898, Sec 193, 526 & 528.*

<sup>86</sup> *Ibid, Sec 139, 526B, 528.*



A Chief Judicial Magistrate and 1<sup>st</sup> Class Magistrate may try the offences provided in Schedule II of the Code of Criminal Procedure, 1898, thus; rioting, giving false evidence, sedition, assaulting or obstructing public servant during suppression riot, committing affray, bribery, voluntarily causing hurt, theft and other petty cases. A Chief Metropolitan Magistrate, Additional Chief metropolitan Magistrate and other Metropolitan Magistrate are appointed to adjudicate criminal cases in a territory of Metropolitan. Government may with the consultation of High Court Division invest Chief Metropolitan Magistrate with power to try as a magistrate all offences not punishable with death.<sup>87</sup>

The Court of Magistrate may pass imprisonment for a term not exceeding five years and fine not exceeding ten thousand taka and whipping.<sup>88</sup> Section 29C of the Code of Criminal Procedure also empowers the court to pass any sentence except death or imprisonment for terms exceeding seven years.<sup>89</sup> Outside the Metropolitan area, 1<sup>st</sup> Class Magistrate, 2<sup>nd</sup> Class Magistrate and 3<sup>rd</sup> Class Magistrate are appointed to try criminal cases.

### **Special Criminal Courts:**

#### **Nari-o-shishu nirjatan Daman Tribunal:**

Nari-o-shishu Nirjatan Doman Tribunal has been established under the provision of the Nari-o-shishu Nirjatan Doman Ain 2000. According to the section 26, in every district there must be a tribunal of such cases. If the government thinks necessary may consist of more tribunal in each district. The tribunal shall be consisted of by one judge who is appointed for amongst the district judge. It also includes Additional District Judge and Session Judge.<sup>90</sup> The Tribunal doesn't take any offence into cognizance without any report written by police officer not below the rank of sub-inspector or any person authorized by government.<sup>91</sup> Appeal from this Tribunal may be preferred

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<sup>87</sup> *Ibid*, Sec 29C.

<sup>88</sup> *Ibid*, Sec 32(1).

<sup>89</sup> *Ibid*, Sec 29C.

<sup>90</sup> *The Nari o Shishu Nirjatan Daman Ain 2000*, 26 (4).

<sup>91</sup> *Ibid*, 27(1).

to High Court Division within sixty days from the date of sentence, order and judgment of the Tribunal. Without confirmation of the High Court Division no death sentence can be executed.

### **The Speedy Trial Tribunal:**

Speedy Trial Act -2002 empowers the Govt. by notification of the official gazette to establish one or more speedy trial tribunals for speedy trial in case of obstructing and disrupting law and order in the country. This tribunal is comprised with the first class magistrate. This tribunal shall try for quick disposal of criminal cases involving extortion, threats, obstruction to traffic, damage to vehicles and properties, where to this list newly includes hijacking, piracy, acts of terror and mayhem and disruptions during tender purchase etc<sup>92</sup> (bdnews24.com, 2014, 3<sup>rd</sup> April). The cases of this tribunal have to be resolved within 120 days.

### **The Environmental Court:**

The environment court was established under section 4 of the Environment Court Act 2000 consisting of one judge holds post as joint district judge and it will be situated in every headquarters of the division. The government may appoint special magistrate to try any offence for which the punishment is not exceeding 2 years imprisonment and 10 thousand taka fine the offence mentioned in section 15 of this Act where the highest punishment is up to 10 year imprisonment and 10 lakh fine or both.

### **The Environmental Appellate Tribunal:**

The Environmental Court Act 2000 provided the provision for establishing environment appellate tribunal under section 12 comprising of a judge post of district judge. The government may empower a district and session judge to work as a judge to the environment appellate court and the

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<sup>92</sup> Speedy Trial gets fresh life, bdnews24.com, 3<sup>rd</sup> April, 2014, [Accessed on 13.06.18], Available at: <https://bdnews24.com/2014/04/03/sp.....>

court will follow the proceeding of Code of Criminal Procedure in criminal cases and proceeding of Code of Civil Procedure in civil suits.

### **The Special Tribunal:**

The Special Tribunal has been established under the Special Power Act 1974 where a session judge works as special judge of the tribunal. It deals with the offences punishable under the Special Power Act 1974, The Arms Act 1818, and the Explosive Substances Act 1908. Appeal from Special Tribunal may be filled before High Court Division within thirty days from the date of order.<sup>93</sup>

### **The Village Court:**

The village court consists of UP chairman, members and representatives from the concerned parties. Under the Village Court Act 2006, the village court can try disputes over property valued not exceeding TK. 25,000. The village court has also power to summon a person to stand as a witness and can impose a fine of up to TK. 500 on contempt charges. The decision is drawn on the basis of majority. If the majority is four to one or three to one, the decision is final and there have no option to file an appeal. On the other hand, if the majority of three to two supports a decision, any party to the dispute may lie a revision application to the Assistant Judge in civil case and to the first class Magistrate in criminal case (sec. 8) No advocates are allowed to agree on behalf of parties. The pecuniary jurisdiction is till 5 thousand taka and the award by this court must not exceed taka five thousand.

## **4. Evaluation of Bangladesh Current Judiciary:**

The present judiciary are extremely suffering from huge backlog of cases; there are 3.3 million pending cases upon the present judiciary<sup>94</sup>; consequently, people are not getting justice in due time and they are losing confidence upon the current judiciary; in some cases they declare openly that

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<sup>93</sup> *The Special Tribunal Act 1974, 30 (2).*

<sup>94</sup> New age, 33 Lakh cases pending with courts, 17<sup>th</sup> January, 2018 , Available at: <http://www.newagebd.net/article/32720/33-lakh-cases-pending-with-courts-lm>

they have no confidence upon the judiciary and they don't want justice.<sup>95</sup> In some cases people wave their rights in stead of bringing of a suit/ case due to not getting the justice in due time for very lengthy trial system and even they suicide due to not getting justice from any corner of the society.<sup>96</sup> Even in some cases, the government is directly responsible for making the judiciary ineffective and for showing no confidence upon the judiciary rather extending helping hand to the judiciary by law enforcing agency in giving proper investigation report and bringing witnesses before courts at the trial of criminal cases and therefore, we see here continuous and random extra judicial killings by the law enforcing members and last update version of encounter doctrine for extra-judicial killing applying upon the suspected drug offenders and about 130 people have already reportedly been shot dead by security forces across the country<sup>97</sup> where even allegation has raised for killings of innocent people and a burning example of the killing of Teknaf municipality councilor Akramul Haque which was clearly revealed by the four audio clips from the victim's wife Ayesha Begum at a press conference at Cox's Bazar Press Club<sup>98</sup>. As a result, a culture of absence of justice has been created in the society. The current judiciary is failing to ensure justice in due time for many reasons: (1) exiting adversarial trial system which is very lengthy system (2) Backdated laws which having no application of digital system (3) inadequate of judicial officers<sup>99</sup> and office staff (4) inadequate accommodation (5) lack of proper court management (6) absence of separate investigation cell under the judiciary (7) Fake cases<sup>100</sup>(8) malpractice by the parties and lawyers (9) corruption (10) interference from the executive etc.

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<sup>95</sup> Khan, Sharier, Denying just won't do, *The Daily Star*, Dhaka, 2015, 2<sup>nd</sup> November, p.1

<sup>96</sup> Hasnat, Mahadi Al, Injustices drove Hazrat, daughter to suicide. *Dhaka Tribune*, 6<sup>th</sup> May, 2017. [accessed at 6.6.2018]. <https://www.dhakatribune.com/bangladesh/2017/05/06/injustices-drove-hazrat-daughter-suicide>

<sup>97</sup> Halt Killings of suspects in anti-drug drive, the *Daily Star*, Dhaka, 7<sup>th</sup> June, 2018, p.1

<sup>98</sup> Call for justice getting louder, the *Daily Star*, Dhaka, 6<sup>th</sup> June, 2018, p.1,2

<sup>99</sup> In comparing the number of judicial officers of other developed and developing countries in proportionate of their citizens, the numbers of judicial officers here are also very inadequate in proportion to our citizens. There are 18 judges in India, 107 in USA per 1 million citizens whereas here there are only 10 judges for the same number of citizens

<sup>100</sup> There is no accurate statistics on the status of false cases but it is often heard in the seminar, workshop from the concerned persons that 80% of total filing cases in the courts of the country are false. On 23<sup>rd</sup> June 2013 in seminar the former state law minister Quamrul Islam said that 80% lawsuits of the country are false (Progress Bangladesh, 2013).

## **5. Findings and Concluding Remarks:**

Judiciary of Bangladesh comprises all courts and tribunals; it can broadly be divided into two categories: i) the lower judiciary & ii) the higher judiciary; the higher judiciary having two divisions- a) the High Court Division and b) the Appellate Division. The lower judiciary is of civil, criminal or special or tribunal. Civil courts are of: (1) The Court of the District Judge, (2) The Court of the Additional District Judge (3) The Court of the Joint District Judge, (4) The Court of the Senior Assistant Judge and (5) The Court of the Assistant Judge. Special tribunal established in our legal system in two ways: (i) by Constitution and (ii) by Statute. There are two types of tribunal under the Constitution, such as: Administrative Tribunal and Administrative Appellate Tribunal. Labour Court, Labour Appellate Tribunal, the Artha Rin-Adalat, Land Survey Tribunal, Land Survey Appellate Tribunal, The Arbitration Tribunal, VAT Appellate Tribunal, Taxes Appellate Tribunal, Family Court, Small Causes Court etc. are present special court under Statutes. There are two classes of Criminal Courts in Bangladesh besides the Supreme Court: (a) Courts of Sessions ; and (b) Courts of Magistrates; Magistrate court is of two types, namely:- (a) Judicial Magistrate; and (b) Executive Magistrate whereas Judicial Magistrate is of four types: (a) Chief Metropolitan Magistrate in Metropolitan Area and Chief judicial Magistrate to other areas; (b) Magistrate of the first class, who shall in Metropolitan area, be known as Metropolitan Magistrate; (c) Magistrate of the second class; and(d) Magistrate of the third class. Nari-o-shisu nirjatan Daman Tribunal, the Speedy Trial Tribunal, the Environmental Court, the Environmental Appellate Tribunal, the Special Tribunal etc. are special criminal courts. In spite of having a rich court system containing different courts-civil, criminal, special courts or tribunal in Bangladesh, people are not getting justice in due time due to huge backlog of cases; there are 3.3 million of cases pending in the higher and lower judiciary. There are many reasons behind such huge backlogs (mentioned in the earlier section). In order to reduce the backlogs, ADR (alternative dispute resolution) system made mandatory (having no separate establishment) in the civil justice system under section 89A of the Code of Civil Procedure, 1906; digital approach has been introduced in the Supreme Court for case dairy maintaining; each year new judicial officers are being appointed but situation has changed yet due to inadequate judicial officers, manpower, serious accommodation crisis and lack of application of digital approach in all cases. Besides, the

corruption and interference of the government, make the justice system delay and ineffective. Under such circumstances, the following steps should be taken and introduced:

- Establishing separate ADR (Alternative Dispute Resolution) courts where a civil suit is to be filed in this court first for ADR resolution; in case of failure of ADR Resolution the suit can be filed in the ordinary civil courts;
- Establishing people court<sup>101</sup> for poor people where no court fees will be required and providing advocates to the clients (Although the district legal aid office is doing the same job but if it is turned into as district people court, it might have a great psychological impact upon the people);
- Introducing Digital Application System in all cases in higher and lower judiciary;
- Increasing the number of judges and manpower in proportion to our people in comparing with few developed and developing countries;
- Ensuring adequate accommodation for smooth judicial functions
- Establishing separate investigation cell under the judiciary
- Introducing encouraging allowance for more disposal

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<sup>101</sup> In India, there is Lok Adalat in place of people court, one of the alternative dispute resolution mechanisms in India; it is very effective court in India; first held in 1982 at Gujarat. The pending cases if the parties are interested to refer to this court and pre-litigation matters are settling matters of these courts; no court fees are required; even if a pending case is referred to this court, and is settled subsequently, the court fees originally paid in the previous court is also refunded back to the parties. Main condition of this court is that both parties in dispute should agree for settlement (Wikipedia, Lok Adalat).